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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/063,159	03/26/2002	Roger Akerlund	47865.272256	2733
28694	7590	11/01/2006	EXAMINER	
NOVAK DRUCE & QUIGG, LLP 1300 EYE STREET NW 400 EAST TOWER WASHINGTON, DC 20005			SCHELL, LAURA C	
			ART UNIT	PAPER NUMBER
			3767	

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/063,159

Applicant(s)

AKERLUND ET AL.

Examiner

Laura C. Schell

Art Unit

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 2,4-7,11,14,18,22-25,29 and 34-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,8-10,12,13,15-17,19-21,26-28 and 30-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 August 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "310" and "313" have both been used to designate the first and second luer lock. The Examiner thanks the Applicant for the explanation and correction made to the objections in the last office action. However, as can be seen in Fig. 5, it appears that "310" and "313" designate the same element, even though it is now understood that they are intended to designate separate elements. Therefore it is requested that Applicant submit a new Fig. 5 which clearly shows the distinction between the First and Second luer lock connectors.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: elements "324" and "309", found in Fig. 5, have not been found within the specification. If the examiner is in error, please provide the page and line location of the description of these elements within the specification.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the

changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 8-10, 12, 16, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Scarrow (US Patent No. 5,061,264). Scarrow discloses a fluid transfer assembly (Fig. 1) for use in an infusion system, said assembly comprising: a fluid container (10) having an infusion fluid, a drug container (50) having a medical substance, at least one fluid barrier (74 and 14) controlling fluid passage between said drug container and said fluid container, said fluid container further comprising at least one inlet port (12) for receiving said medical substance from said drug container, said drug container further comprising a cap (20) for sealing said drug container, said at least one inlet port further comprising a first luer lock connector (16; col. 3, line 14), and said cap further comprising a second luer lock connector (32; col. 3, lines 37-38 disclose that portion 32 is the connector that connects with luer lock connector 16) for attachment to said first luer lock connector, wherein said at least one fluid barrier is

Art Unit: 3767

designed and arranged to be ruptured by an external force to allow said fluid passage (col. 3, line 27; col. 4, lines 41-42).

In reference to claim 3, Scarrow discloses that the cap further comprises a protruding member (28) forming a second fluid duct between said drug container and said second luer lock connector, wherein said fluid barrier is provided inside said second fluid duct (rupturable barrier 74 is within 28, as 28 extends all the way into the cap portion to where 74 is located).

In reference to claim 8, Scarrow discloses that the second luer lock connector further comprises a pierceable closure (72) for protection before use.

In reference to claim 9, Scarrow discloses that the drug container further comprises a neck (62), and said cap further comprises locking members for grasping said neck (38).

In reference to claim 10, Scarrow discloses that the drug container further comprises an opening sealed by a closure (60), and said cap further comprising a hollow needle (70) for penetrating said closure.

In reference to claim 12, Scarrow discloses that the drug container further comprises a neck (62), said cap further comprising a protruding member (28) forming a second fluid duct between said drug container and said second luer-lock connector, and said cap further comprising locking members (38) for grasping said neck.

In reference to claim 16, Scarrow discloses that the fluid container further comprises a protruding resilient tube (12 protrudes externally from the inside of the fluid container), said first luer lock connector (16) of said at least one inlet port being

provided on a hollow spike member (spike part of 14) able to be firmly retained inside said tube.

In reference to claim 19, Scarrow discloses that the cap further comprises a protruding member (28) forming a second fluid duct between said drug container and said second luer lock connector, said fluid barrier being provided inside said second fluid duct (rupturable barrier 74 is within 28, as 28 extends all the way into the cap portion to where 74 is located), said drug container comprising a rigid material (col. 3, line 65), said protruding member comprising a more flexible material than said second luer connector and said drug container, and said fluid barrier comprising a more brittle material than said drug container, said protruding portion, and said second luer lock connector (col. 4, lines 41-42).

In reference to claim 20, Scarrow discloses that the composition of said drug container is selected from the group consisting of glass and a rigid polymer material (col. 3, line 65 discloses the drug container is glass).

Claim 21<sup>26, 27, 28, 30, 32 and 33</sup> is rejected under 35 U.S.C. 102(b) as being anticipated by Scarrow (US Patent No. 5,061,264). Scarrow discloses a drug container (50) comprising: a fixed dose of a medical substance, and a cap (20) for sealing said drug container, said cap further comprising a luer lock connector (32; col. 3, lines 37-38 disclose that portion 32 is the connector that connects with luer lock connector 16) for attachment to a corresponding connector (16) provided on an inlet port (12) of a container for infusion fluid (10), thereby creating a luer lock coupling.

In reference to claim 26, Scarrow discloses a pierceable closure (72) for protecting said second luer lock connector (72 is perfectly capable of protecting the luer lock connector (32) from anything that may enter from the open end of 46).

In reference to claim 27, Scarrow discloses that the drug container further comprises a neck (62), and said cap further comprises locking members (38) for grasping said neck.

In reference to claim 28, Scarrow discloses that the drug container further comprise an opening sealed by a closure (60), and said cap further comprises a hollow needle (70) for penetrating said closure.

In reference to claim 30, Scarrow discloses that the drug container further comprises a neck (62), said cap further comprises a protruding member (28) forming a second fluid duct between said drug container and said second luer lock connector, and said cap further comprising locking members (38) for grasping said neck.

In reference to claim 32, Scarrow discloses that the cap further comprises a protruding member (28) forming a fluid duct between said drug container and said luer lock connector, wherein a fluid barrier is provided inside said fluid duct (rupturable barrier 74 is within 28, as 28 extends all the way into the cap portion to where 74 is located), said drug container comprising a rigid material (col. 3, line 65 discloses the drug container is glass), said protruding member comprising a more flexible material than said luer lock connector and said drug container, and said fluid barrier is made of a more brittle material than said drug container (col. 4, lines 41-42)., said protruding portion, and said luer lock connector.

In reference to claim 33, Scarrow discloses that the drug container is made from the group consisting of glass and a rigid polymer material (col. 3, line 65 discloses that the drug container is made from glass).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 13 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scarrow (US Patent No. 5,061,264) in view of Haber et al. (US Patent No. 5,593,028). Scarrow discloses the device substantially as claimed including a fluid barrier (74), however, Scarrow does not disclose that the barrier is a brittle polymer. Haber, however, discloses a rupturable barrier comprises of a brittle polymer dividable along a weakening line by said external force (col. 7, lines 5-16). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Scarrow with the brittle barrier, as taught by Haber, in order to provide a barrier



that is assured to break upon the external force applied, in order to assure that the flow between containers takes place during a critical medical infusion to a patient.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scarrow (US Patent No. 5,061,264) in view of Vaillancourt (US Patent No. 5,897,526). Scarrow discloses the device substantially as claimed including a protruding member (28) forming a second fluid duct between said drug container and said second luer lock connector and an inlet port (12). However, Scarrow does not disclose a clamping members or an infusion line. Vaillancourt, however, discloses a clamping members (Fig. 14, 22' and 55) as well as an infusion line (12) attached to the inlet port. The clamping members could be used on the neck portion of (28) to compress the protruding member, thereby closing said second fluid duct and preventing undesirable fluid passage between said second luer lock connector and said drug container, and the infusion line could be used at the inlet port to allow the medication/fluid to be infused into the patient. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Scarrow with the clamping members and infusion line, as taught by Vaillancourt, in order to provide a means for delivering the medication as well as to provide a means for stopping flow in the even that flow between the drug container and the fluid container needs to be suddenly stopped.

***Response to Arguments***

Applicant's arguments with respect to claims 1, 3, 8-10, 12, 13 15-17, 19, 20, 26-28 and 30-33 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Schell whose telephone number is (571) 272-7881. The examiner can normally be reached on Monday-Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LCS  
LCS

KEVIN C. SIRMONS  
SUPERVISORY PATENT EXAMINER  
